

ESTTA Tracking number: **ESTTA523783**

Filing date: **02/27/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202898
Party	Defendant Mikhail Levitin T/A Mikhail Levitin Institute
Correspondence Address	MIKHAIL LEVITIN PO BOX 102 REEDERS, PA 18352-0102 UNITED STATES vitality@ptd.net
Submission	Response to Board Order/Inquiry
Filer's Name	Mikhail Levitin
Filer's e-mail	vitality@ptd.net
Signature	/Mikhail Levitin/
Date	02/27/2013
Attachments	022613APPLICANT.pdf ( 8 pages )(86429 bytes )

APPLICANT'S CLEARIFIED ANSWER TO OPPOSER'S FIRST SET  
OF INTERROGATORIES

3. Identify all investigations, surveys, research, polls, focus groups, or opinions that

Applicant has ever conducted, received, or seen concerning confusion or the likelihood of confusion between Applicant's Mark and Opposer's L'OREAL Mark or Opposer's Marks, between Applicant and Opposer, and/or between Applicant's products and Opposer's products.

Applicant has conducted PUBLIC OPINION and received a negative result for the likelihood of confusion between Applicant's Mark and Opposer's L'OREAL Mark or Opposer's Marks, between Applicant and Opposer, and/or between Applicant's products and Opposer's products.

Applicant has seen and experienced the efforts of USSR KGB and OBHSS in the investigation and charging him as an entrepreneur who makes and develops his own product and never suggested on a likelihood of confusion between Applicant's Mark and Opposer's L'OREAL Mark or Opposer's Marks, between Applicant and Opposer and even their exquisite minds could not come to this conclusion.

4. Identify all investigations, research, searches, studies, focus groups, and polls that

Applicant has ever conducted, received, or seen concerning the availability for use and/or registration of Applicant's Mark or variations thereof.

Applicant has searched on internet, made direct call to suppliers of skin care products and salons requesting a product with the same or a similar to Applicant's Mark name.

7. Describe the types or classes of purchasers to whom Applicant has marketed or

intends to market anti-aging cream in connection with Applicant's Mark.

Applicant has been marketing his product directly to customers without purchasers.

10. Identify and describe all agreements between Applicant and any third party concerning the use and/or registration of Applicant's Mark (or any feature, portion, part, element, or component of Applicant's Mark), including but not limited to, license agreements, consent agreements, coexistence agreements, assignments, and settlement agreements.

Applicant has had a gentlemen agreement with his accountant about possible benefits from a sale of his product, there were no third parties.

#### APPLICANT'S AMENDMENT TO ANSWER TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

3. Applicant has not used Applicant's Mark in commerce.

Due to the fact that Opposer refused to identify the meaning of "commerce" Applicant assumes that it means as a "profitable act with intention to make money" and so the answer is:

Denied.

4. Opposer's L'OREAL Mark and each of the first two terms of Applicant's Mark have identical characters except for the "F" in Applicant's Mark, which replaces the "L" in Opposer's L'OREAL Mark.

Denied due to the undisputed facts:

1. The difference is in numbers:

L ' O R E A L – 7 characters;  
F O R E A L – 6 characters;

2. Opposer's mark has letter L and an apostrophe before O;

Applicant's mark has letter F before O;

3. Different in accent, and it has been previously described:

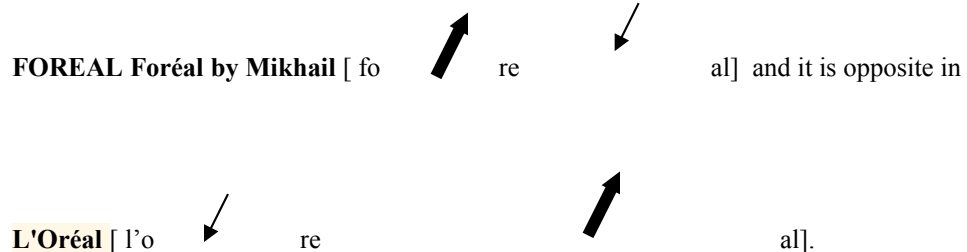
The letter combination **ea** in English language unmistakably different then in the famous word **L'Oréal**.

For example, in commonly used words in English language “deal, bear, pear, tear, near, clear” the stress is on the "e" part of the diphthong, not on "a" as it is in the word

**L'Oréal**:

**FOREAL Foréal by Mikhail** [ fo      re      al] and it is opposite in

**L'Oréal** [ l'o      re      al].



21. Opposer's L'OREAL Mark is widely recognized by the general public.

Unable to agree or disagree do to the fact that Applicant cannot represent an opinion of general public.

25. Anti-aging cream is a type of face cream, hand cream and/or face lotion.

Unable to agree or disagree as there has not given and agreed with the definition of

“anti-aging” and scientifically speaking a cream could be “anti-aging”, but an “anti-aging” product is not necessary a face cream or face lotion.

34. Applicant selected Applicant's Mark at least in part because of the widespread recognition of Opposer's L'OREAL Mark and/or Opposer's Marks.

Denied. It has been asked and answered in the #1 of INTERROGATORIES:

In addition, Applicant's believes supported by the facts that have been stated above in #4 that L'Oréal and FOREAL Foréal by Mikhail are different marks.

39. Applicant has never manufactured or sold anti-aging creams.

Denied.

As a matter to fact, Applicant has approached Opposer by a direct marketing campaign with his

product in 2009, 2010 with the goal to sell the product. Applicant has been manufacturing the product and by himself is a customer of it for many years.

40. Applicant has no capacity and/or intention to manufacture or sell anti-aging creams.

Denied. Opposer has no ground for this statement.

41. To the extent that Applicant intends to offer anti-aging creams under Applicant's Mark, Applicant chose the name FOREAL FOREAL because consumers associate that mark with Opposer's L'Oreal name, Opposer's L'OREAL Mark and Opposer's Marks, and/or with Opposer.

Denied. It has been asked and answered in the #1 of INTERROGATORIES:

“In 1969 my friend gave me **L'Oréal's** Age Perfect Day **Cream** and ask me for my opinion.

My grandmother tried my cream and compared it with **L'Oréal's** Age Perfect Day and stated that

**L'Oréal's** Age Perfect Day is “dreck” and my is real, so I called it Foreal by Mikhail”.

43. Prior to applying for Applicant's Mark, Applicant was aware that Opposer sells personal

care products, including but not limited to skin creams, anti-aging creams, and cosmetics.

Agree in part and deny in part.

Agree that Applicant was aware that Opposer sells personal care products, including but not limited to skin creams.

Denied. Disagree about a correlation between alleged name “anti-aging” creams and it’s functional ability.

46. Applicant is not aware of any mark other than Opposer's that utilizes L'OREAL.

Agreed. Applicant is not aware of any mark other than Opposer's that utilizes L'OREAL.

**Applicant's Addendum to Answers to First Set of Document Requests**

1. In response to Request for Documents Nos. 1, 10, 12 — 17, 20 and 21, you indicate that no documents are available because they have been destroyed by Hurricane Sandy.

Please confirm that all documents relating to each of those requests have been destroyed.

Beside the documents the copies of which have been submitted to Plaintiff

Applicant has a letter that approved Mr. Stempel, CPA to continue business contacts

with Liliane Bettencourt, L’Oreal, and the rest is destroyed.

2. In response to Request for Documents Nos. 4 and 5, you indicate that responsive

documents would be impossible to produce as they are only available in the KGB archives.

Is it possible to request or obtain those documents from the KGB archives?

Applicant cannot stop Plaintiff to expose all possibilities; also it might be a one

way refreshing tour to Siberia is attached.

3. In addition to the general comments above, please note the following deficiencies pertaining to your responses to the First Set of Document Requests. Numbers refer to the document requests that we sent you.

Applicant gave his answers to the best of his ability;

Opposer is invited to define the deficiencies to avoid any misunderstanding.

4. Your response to Request No. 2 is non-responsive. Please provide us with all documents relating to your selection and clearance of the mark in issue, including any searches, investigations, surveys, studies, research, polls, reports and opinions that you made or received concerning the availability for use and/or registration of FOREAL FOREAL BY MIKHAIL. Alternatively, provide a statement that no such documents exist.

Applicant has never filed the mark “FOREAL FOREAL BY MIKHAIL” and so no such documents exist for the above-mentioned mark.

5. Your response to Request No. 3 is non-responsive. Please provide us with all documents referring or relating to your consideration of which goods or services are to be offered in connection with the mark FOREAL FOREAL BY MIKHAIL, including any searches, investigations, surveys, studies, research, polls, reports and opinions you undertook or received.

Your response to this request was cut off. Please provide a complete response.

Applicant has not filed the mark “FOREAL FOREAL BY MIKHAIL”  
and so no such documents exist for the above-mentioned mark.

9. Your response to Request for Documents No. 9 is cut off. Please produce the entire response to this Request. Please provide us with documents sufficient to identify all types of media in which you intend to advertise, promote, offer, feature, or display anti-aging cream under the mark.

Applicant's answer to #9:

Identify the persons most familiar with Applicant's Mark, Applicant's anti-aging products, Applicant's actual or intended advertising, promotion, and marketing of anti-aging products in connection with Applicant's Mark, and Applicant's actual or intended channels of trade and class of consumers for anti-aging products.

Applicant is the persons most familiar with Applicant's Mark, Applicant's anti-aging products, Applicant's actual or intended advertising, promotion, and marketing of anti-aging products in connection with Applicant's Mark, and Applicant's actual or intended channels of trade and class of consumers for anti-aging products.

11. You attach Exhibit C in response to Request for Documents No. 11.

However, the product depicted in Exhibit C does not include your mark. Please supply all documents responsive to the above request that show your mark.



Attached the new Exhibit C1 with the response to Plaintiff's request.